IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

WP(C).No. 11159 of 2007(C)

PETITIONER:

CHANDRALAL, ADVOCATE,
T.C.66/1993, CHANDRALAYAM, KOLIYOOR,
MUTTACAUDE P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.P.N.PURUSHOTHAMA KAIMAL
SRI.P.SADANANDAN

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE LAW SECRETARY, LAW DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

3. THE KERALA PUBLIC SERVICE COMMISSION,
REP. BY ITS SECRETARY, PATTOM, THIRUVANANTHAPURAM.

R1 & R2 BY GOVT. PLEADER MR. BIJOY CHANDRAN.
R3 BY S.C. MR. P.C. SASIDHARAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

WP(C).No. 11159 OF 2007 C

Dated this the 30th March, 2007.

JUDGMENT

The petitioner is an Advocate desirous of applying for the post of Legal Assistant Gr.II in the Law Department, State of Kerala. The method of appointment laid down in the relevant rules for the post of Legal Assistant Gr.II consists of the following four methods:-

i) Direct Recruitment

ii) Appointment from Assistant Tamil Translators and Assistant Kannada Translators

iii) Appointment or promotion from any other category in Kerala Secretariat Subordinate Service and

iv) Transfer from any category in any department under the Government or in the service of the High Court of Kerala

2. Selection for direct recruitment comes within the purview of the Kerala Public Service Commission. Selection for appointment under methods 3 and 4 is the function of respondents 1 and 2.

3. At some point of time, exchange of views had taken place between the Government and the Public Service Commission to entrust the entire selection process for the post of Legal Assistant Gr.II with the Public Service Commission. Correspondence between respondents 2 and 3 in

that respect stands freezed for reasons not plainly discernible. Any way, the fact remains that no formal decision has been taken to entrust the task of selection for appointment following methods 3 and 4, so far, to the P.S.C. Therefore, the second respondent has published two notifications evidenced by Exts.P4 and P5 inviting applications from in-service personnel who come within the field of choice. Ext.P4 notification was issued on 20.12.2006 and Ext.P5 was issued on 1.12.2006.

4. The contention of the petitioner is that unless the third respondent-Public Service Commission issues notification inviting applications from open market candidates for direct recruitment, it will result in denial of opportunity to persons who want to apply under the direct recruitment quota because those who are selected pursuant to Exts.P4 and P5 notifications will have the benefit of getting appointment earlier than the direct recruits. It is therefore prayed in the writ petition that this Court may issue a direction to the first respondent to fill up the entire vacancy of Legal Assistants Gr.II by following the procedure for selection by Public Service Commission alone and to declare that direct recruitment selection of departmental candidates should also be done by Public Service Commission, the third respondent, and both selections shall proceed simultaneously.

5. I have heard counsel appearing for the petitioner.

6. Whether or not the entire process of selection shall be entrusted to the third respondent is a matter coming within the policy making power of the first respondent after due consultation with the third respondent. There is no constitutional or legal compulsion that the selection for recruitment to all categories of public service shall be entrusted to the third respondent-Public Service Commission. It is true that at some point of time there was correspondence between the second respondent and the third respondent about the possibility of entrusting the entire selection for appointment to the post of Legal Assistant Gr.II to the Public Service Commission. But that has not so far materialised. Though it is open to the respondents concerned to proceed with the matter and to take decision in accordance with law, the petitioner has no right to seek for a direction to the respondents not to fill up the vacancies of Legal Assistants Gr.II until the entire selection is entrusted to the Public Service Commission, even if the said procedure may come into being, in the near future. According to the special rules now in force, selection for direct recruitment alone need be done by the Public Service Commission and selection as far as methods 3 and 4 are concerned can be legally and validly done by

respondents 1 and 2. The contention that if the selection through methods 3 and 4 are completed earlier than the selection by the Public Service Commission it will result in injustice and illegality, has no merit. When selection and appointment have to be done from among candidates belonging to different sources and by following different methods it may not practically be possible that both kinds of selection shall run concurrently and everything shall begin and end simultaneously. The rules have contemplated such situations and have prescribed remedial measures also. For example, the third proviso to Rule 27 of K.S and S.S.R has been incorporated to take care of situations that may arise consequent on promotions being made earlier than direct recruitment or direct recruitment is made earlier than departmental selection and appointment.

Writ petition is devoid of merit, and therefore, dismissed.

K.K.DENESAN
Judge

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